

MAY 13 2003

Not for Publication

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

RAUL GONZALEZ, JR.,

Plaintiff - Appellant,

v.

**CHANDRA SPENCER; FRANSCELL,
STRICKLAND, ROBERTS &
LAWRENCE, a Professional Corporation;
LOS ANGELES COUNTY,**

Defendants - Appellees.

No. 00-55935

D.C. No. CV-00-01944-WJR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
William J. Rea, District Judge, Presiding

Argued and Submitted November 6, 2001
Pasadena, California

Before: **HALL, KOZINSKI** and **W. FLETCHER**, Circuit Judges.

“A case is moot only if interim events have ‘completely and irrevocably
eradicated the effects of’ an allegedly improper ruling.” In re Pintlar Corp., 124

* This disposition is not appropriate for publication and may not be cited
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

F.3d 1310, 1312 (9th Cir. 1997) (quoting Wong v. Dep't of State, 789 F.2d 1380, 1384 (9th Cir. 1986)). In light of the settlement, Gonzalez no longer faces a significant prospect of illegal inspection or disclosure. The settlement does not, however, affect Gonzalez's claims for damages based on past conduct.

Spencer acted under color of state law. She was retained to represent state entities and their employees in litigation. She inspected Gonzalez's file in the course of that representation, and used her status to gain access to the file. Her role was analogous to that of a state prosecutor rather than a public defender, because she acted on behalf of the state rather than as its adversary. See Polk County v. Dodson, 454 U.S. 312, 323 n.13 (1981).

Spencer was not "[c]ourt personnel" for purposes of California Welfare & Institutions Code § 827(a)(1)(A). She was not a court employee and did not perform functions routinely performed by court employees. Rather, she was an outside service provider retained to represent the court with respect to its pecuniary interests. Michael v. Gates, 38 Cal. App. 4th 737 (1995), is not on point. The statute at issue there placed rights to LAPD personnel files in the LAPD as an institution. The privilege to the files belonged to the LAPD itself as well as the individual officers. See id. at 744. Neither the juvenile court nor its

personnel were entitled to share Gonzalez's case file with counsel simply to protect their own pecuniary interests.

Spencer therefore had to get court permission before inspecting Gonzalez's file. State law required her to petition the juvenile court. See Cal. Welf. & Inst. Code § 827(a)(1)(M); Cal. Rules of Court 1423(b). Although the district court could have ordered disclosure notwithstanding state law, the file was still presumptively protected until it did. See 23 Charles Alan Wright & Kenneth W. Graham, Jr., Federal Practice and Procedure § 5428, at 817 (1980) ("[E]ven in cases where federal law applies, constitutional and prudential considerations suggest that courts should carefully assess any attempt to compel disclosure of confidential juvenile court [files]."). Spencer could not inspect the file on her own initiative on the theory that she could have obtained permission, had she asked. Cf. United States v. Echegoyen, 799 F.2d 1271, 1280 n.7 (9th Cir. 1986) ("[T]o excuse the failure to obtain a warrant merely because the officers had probable cause and could have . . . obtained a warrant would completely obviate the warrant requirement . . ."). Nor could the district court authorize her search retroactively. If Spencer violated Gonzalez's constitutional rights, he is entitled at least to nominal damages, even if Spencer could have obtained the documents lawfully. See Wilks v. Reyes, 5 F.3d 412, 416 (9th Cir. 1993).

Spencer is not entitled to qualified immunity. She is a private party, not a government employee, and she has pointed to “no special reasons significantly favoring an extension of governmental immunity” to private parties in her position. See Richardson v. McKnight, 521 U.S. 399, 412 (1997).

Gonzalez’s claims were not estopped or waived by his mere pursuit of the lawsuit or his failure to object immediately when Spencer first disclosed the file. He did not take “inconsistent positions” with respect to the file’s confidentiality, Rissetto v. Plumbers & Steamfitters Local 343, 94 F.3d 597, 601 (9th Cir. 1996) (internal quotation marks omitted), nor did he voluntarily “relinquish[] . . . a known right,” Yoshida v. Liberty Mut. Ins. Co., 240 F.2d 824, 829 (9th Cir. 1957).

The district court’s dismissal of the damages claims is reversed. The injunctive claims are dismissed as moot. The case is remanded for further proceedings consistent with this memorandum.

REVERSED in part, DISMISSED in part and REMANDED. Costs to appellant.